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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1396

MICHELIN TIRE CORPORATION,
Petitioner,

vs.

W. L. WAGES, Tax Commissioner, et al.,
Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of Georgia

PETITIONER'S REPLY BRIEF

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This Reply Brief is addressed to arguments first raised in the Respondents' Brief in Opposition to the granting of certiorari.

1. **The Respondents' Argument That the Decision Below Accords With Applicable Decisions of This Court.**

The decision of the Supreme Court of Georgia ignores, disregards, and refuses to follow and apply, the "original form"

doctrine which, along with the "original package" doctrine, had its origin in *Brown v. Maryland*, 25 U.S. 419 (1827), as shown at pages 5-7 of Michelin's Petition for a Writ of Certiorari.

The Respondents, in their Brief, do not cite any decision of this Court which questions the existence and soundness of such "original form" doctrine.

In *Hooven and Allison Company v. Evatt*, 324 U.S. 652 (1945), which is the most recent decision of this Court cited and relied upon by the Respondents, the Court, at 666, reaffirmed the "original form" doctrine by quoting with approval from an earlier decision the statement that: "Indeed, goods imported, while they remain in the hands of the importer, in the *form and shape* in which they were brought into the country, can in no just sense be regarded as a part of that mass of property in the state usually taxed for the support of state government." (Emphasis supplied.)

The "form and shape" of a tire which is imported without packaging is not changed in any way by stacking such tire in the importer's warehouse with other imported tires of the same size and style.

May v. New Orleans, 178 U.S. 496 (1900), cited and relied upon by the Respondents, holds that where a shipping carton containing smaller packages of imported goods is broken by the importer, the breaking of such "original package" shipping carton results in loss of immunity from local taxation. The decision is completely silent with respect to goods imported without packaging, and lends no support whatsoever to Respondents' contention that, where goods are imported without packaging, the entire shipment is an "invisible gossamer" original package.

In no decision has this Court ever given the slightest indication that, where unpackaged imports are involved, the entire

shipment is to be regarded as being an "invisible gossamer" original package.

The Respondents are mistaken in their contention that the imported tires have been put to the use for which they were imported. Michelin imports the tires for the sole purpose of selling them, and not for its own use in manufacturing or otherwise. In *Youngstown Sheet and Tube Company v. Bowers*, 358 U.S. 534 (1959), the Court, at 540-541, recognizes that where goods are brought into this country by an importer "for his own use", as for example in manufacturing, they become taxable when they are so "used" by such importer, but that where goods are imported for the purpose of selling them, the importer acquires, by payment of the duty to the United States, "the right to dispose of his merchandise, as well as to bring it into the country . . .".

Where packaged imports are still in the "original package" in which imported, stacking such packaged imports in the importer's warehouse, along with other packaged imports of the same size and style, does not result in loss of immunity from local taxation.

In like manner, where unpackaged imports are still in the "original form" in which imported, stacking such unpackaged imports in the importer's warehouse, along with other unpackaged imports of the same size and style, does not result in loss of immunity from local taxation.

The foregoing is especially true where, as here, all of the imported goods, both packaged and unpackaged, flow out from the importer's warehouse to franchised tire dealers scattered throughout six states, and it is such franchised tire dealers who sell the imported tires and tubes for local consumption at the point of final destination. Petition for a Writ of Certiorari, pages 7-8.

The Supreme Court of Georgia refused to recognize and apply the "original form" doctrine established by decisions of this Court. It refused to recognize, as required by decisions of this Court, that the imported tires, while in Michelin's warehouse, are still in the flow of import distribution, and are still imports. Its decision clearly is not in accord with decisions of this Court.

2. **The Respondents' Argument That Any Conflicts in State Court Decisions Result From Factual Determinations and Not From Failure to Recognize Legal Principles.**

Where goods imported without packaging are involved, the courts of New York, North Carolina and Florida recognize and give effect to the "original form" doctrine as established by the *Brown v. Maryland* line of decisions, whereas the courts of California, Louisiana, and now Georgia, ignore, disregard, and refuse to follow and apply, such "original form" doctrine. Petition for a Writ of Certiorari, pages 8-9.

Whether or not such "original form" doctrine should be recognized and given effect where goods are imported without packaging is a question of law. The conflict in state court decisions is a conflict with regard to such question of law.

Such question of law, as to which there is substantial conflict in state court decisions, involves a federal constitutional issue of wide import, the resolution of which will have immediate importance far beyond the particular facts and parties involved in this case.

3. **The Respondents' Hinted Suggestion That Vehicles of Transportation Should Perhaps Be Considered as Being "Original Packages".**

Treating vehicles of transportation as being "original packages" would do violence to the normal and ordinary meaning of

the word "package", and would wipe out completely all immunity of imported goods from local taxation because in every case the imported goods must necessarily be brought into this country in some vehicle of transportation.

Such a result cannot be reconciled with *Brown v. Maryland* and other decisions discussed in Michelin's Petition for a Writ of Certiorari.

In their statement of the Question Presented, Brief page 2, the Respondents correctly recognize and concede that the tires are imported by Michelin "without packaging".

CONCLUSION

Wherefore, Michelin respectfully prays that its Petition for a Writ of Certiorari be granted.

Respectfully submitted

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